Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Satellite Delivery of Network Signals	)	CS Docket No. 98-201
to Unserved Households for	)	RM No. 9335
Purposes of the Satellite Home	)	RM No. 9345
Viewer Act	)	
	)	
Part 73 Definition and Measurement	)	
of Signals of Grade B Intensity	)	

COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS"), by its attorney, respectfully submits these comments in response to a Notice of Proposed Rulemaking ("Notice") in which the Commission responds to petitions for rulemaking filed by the National Rural Telecommunications Cooperative and EchoStar Communications Corporation.[1] These petitions urge the agency to assert jurisdiction over, and to enlarge by interpretation or regulation, the statutory language which objectively determines "whether a household is 'unserved' by local network affiliated television stations for purposes of the 1988 Satellite Home Viewer Act (SHVA)."[2] This determination governs whether satellite carriers have a compulsory copyright license to sell packages of distant network signals to that household.

[1] Notice of Proposed Rulemaking, CS Docket No. 98-201, released November 17, 1998.

[2] Notice at ¶1.

I. Introduction.

The Notice carefully and accurately summarizes the history and purpose of the SHVA as well as the litigation which has resulted in orders by two Federal District Courts that hold PrimeTime 24 and its distributors, including NRTC and (at the time) Echostar, responsible for systematically disregarding the clear limits of SHVA's compulsory copyright license by selling satellite-delivered distant network signal packages throughout the service areas of local network affiliates.[3] In light of the threat that these two decisions -- and their findings of massive copyright infringements -- present to the historical practice of these and other carriers and distributors of ignoring the limits of SHVA, it is entirely unsurprising that they would seek authority in another forum to continue to build their profitable businesses.[4]

The Notice proceeds to seek comments on a range of jurisdictional, policy and technical issues related to the Commission's proper regulatory role, if any, in the redefinition or implementation of the statutory standard for determining what households

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[3] CBS Inc. et al. v. PrimeTime 24 Joint Venture, affirming in part and reversing in part Magistrate Judge Johnson's Report and Recommendations, 9 F. Supp. 2d 1333 (S.D. FL, May 13, 1998); CBS Inc. et al. v. PrimeTime 24 Joint Venture, Supplemental Order Granting Plaintiffs' Motion for Preliminary Injunction (S.D. FL, July 10, 1998) (No. 96-3650-CIV); ABC, Inc v. PrimeTime 24 Joint Venture, 1998 WL 544297 (M.D. NC, Aug. 19, 1998). See also, CBS Broadcasting Inc. et al. v. Echostar Communications Corp. et al. (S.D. FL) (No. 98-2651-CIV-Nesbitt).

[4] The Commission properly states that "[e]vidence in the [two] court cases strongly suggests that many, if not most, of [PrimeTime 24's] subscribers do not live in 'unserved households' under any interpretation of that term" and that the Commission does not "appear to have the statutory authority to prevent most of PrimeTime 24's subscribers from losing their network service under the Miami preliminary injunction (and under a possible permanent injunction)." Notice at ¶15.

are "unserved" by local network station signals. The National Association of Broadcasters and the Network Affiliated Stations Alliance are filing comprehensive comments which will address all of these issues in detail. The purpose of CBS's brief filing is to emphasize a few general principles which, we believe, should guide the Commission in approaching this proceeding.

II. The SHVA is a copyright statute which sought to ensure "lifeline" network television service to a small number of households.

The Notice appropriately recognizes that the "narrow compulsory copyright license" created by the SHVA creates a "limited exception to the exclusive programming copyrights enjoyed by networks and their affiliates."[5] The limited exception was intended to facilitate a lifeline service so that "households that cannot receive over-the-air broadcasts or cable can be supplied with [network] television programming via home satellite dishes."[6]

Even if the Commission finally decides that it has jurisdiction over some aspects of SHVA compliance, CBS believes that it should be very circumspect about asserting and exercising such jurisdiction in this proceeding. As explained below, in the wake of two adverse court decisions, the petitioners are essentially invoking misplaced communications

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[5] Notice at ¶2.

[6] H. R. Rep. No. 103-703 at 5 (1994). This lifeline service is intended to be unavailable not only to households which have access to an over-the air signal from a local network affiliate, but also to households which have subscribed within the last 90 days to a cable service which retransmits the signal of that local network affiliate. 17 U.S.C. §119 (d) (10) (B).

policy arguments to seek an expansion of a compulsory copyright license -- an expansion they were unsuccessful in obtaining in the 1988 and 1994 legislative process culminating in the SHVA.

For example, a redefinition of the familiar dBu levels that constituted "Grade B [signal] intensity" for the purpose of defining "unserved households" when the Act was adopted in 1988, when it was amended in 1994, and which still are operative today, would have that effect. Indeed, an expansion of the scope of a copyright license would be the direct and undeniable result of such a redefinition in this proceeding.

II. To the extent that SHVA implicates communications policy, the limits on the copyright compulsory license it establishes are intended to preserve localism and not to enhance competition among multichannel video programming distributors.

Those who would have the Commission assert jurisdiction to reinterpret this copyright legislation urge that it do so in order "[t]o promote competition in the provision of video programming services... ."[7] In fact, promoting competition among video programming services, as worthy a goal as that is, has nothing whatever to do with the express central purpose of SHVA. That purpose, as expressed in the legislative history of the original 1998 Act, was "to...bring...network programming to unserved areas while preserving the exclusivity that is an integral part of today's network-affiliate relationship."[8]

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[7] See, for example, Emergency Petition for Rulemaking of the National Rural Telecommunications Cooperative, RM 9335 (July 8, 1998) at p. 2.

[8] H.R. Rep. No 100-887, pt. 2 at 20 (1998).

Those urging the interpretation of SHVA in a way that promotes competition presumably mean that the distant network affiliates imported under SHVA should be allowed to compete with the local affiliate signals provided over-the-air and by cable in communities throughout the country for the purpose of enhancing competition among multichannel video programming distributors. Using SHVA to nurture such competition would of course be irreconcilable with the fundamental protection of local affiliate exclusivity which is at the heart of this copyright statute. It would also be contrary to long-standing Commission policy with regard to cable importation of distant broadcast signals.[9]

Most fundamentally, it would represent an abdication of long-standing Congressional and Commission policy aimed at fostering a national broadcasting system based on the principle of "localism" in order "to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern."[10] The nature and importance of this principle and its relevance to this proceeding have already been explained by others.[11] We would just emphasize here that it is the symbiotic combination of national and local programming -- and national and local advertising to support that programming -- that gives the entire system its uniqueness, its

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[9] Cable systems are generally required to delete the duplicating signals of distant network affiliates within their protected zone on the request of a local affiliate. 47 C.F.R. §76.92.

[10] Turner Broadcasting System v. FCC, 512 U.S. 622, 663 (1994).

[11] See, e.g., Preliminary Response of National Association of Broadcasters to Emergency Petition for Rulemaking Filed by the National Rural Telecommunications Cooperative, RM 9335, July 17, 1998 at pp.12-15.

strength, and its value to local communities.

III. Congress Can and Should Balance the Relevant Communications and Copyright Policy Interests By Authorizing "Local-To-Local" Satellite Retransmissions of Broadcast Station Signals.

As discussed above, CBS believes that the Commission has only a very limited proper role, if it has any at all, in interpreting and implementing the scope of a copyright license clearly defined by Congress (twice) and enforced by orders of two federal courts, including an order (by which both petitioners were bound) preliminarily enjoining massive nationwide infringements. Rather, the legitimate interest of the Commission in enhancing competition among multichannel video programming distributors by making network programming available to satellite subscribers can only be furthered by Congressional action adopting a new compulsory copyright license which generally authorizes satellite retransmissions of local network affiliate signals back into their local markets. While such a copyright license would need to be carefully designed to protect the legitimate competitive interests of all the affected parties, CBS believes that such a legislative solution is indeed feasible and has the potential not just to further competition but also to

eliminate much of the current incentive of satellite service providers to build businesses based on copyright infringements.

Respectfully submitted,

CBS CORPORATION

By _____

Mark W. Johnson
600 New Hampshire Ave, N.W.
Suite 1200
Washington, DC 20037
(202) 457-4513

Its Attorney

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